RAM : CEGCANAL
e : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

EXCISE APPEAL BRANCH

Appeal No. E/894 /2006 - EX[DB] Date 11/12/2009

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
HINDUSTAN COCA COLA BEVERAGES PVT. LTD.
5 KM STONE, MASURI- GULAOTHI ROAD,
GHAZIABAD, UTTER PRADESH

HINDUSTAN COCA COLA BEVERAGES PVT. LTD. Appellant
Vs
C.C.E. MEERUT II Respondent

I am directed to transmit herewith a certified copy of **Final order No. 1354/2009 EX[DB]** dated 09-12-09 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :
1. Respondent
   C.C.E. MEERUT II
   OPP. SAHEED PARK (NEAR ASHOK KI LAT) DELHI ROAD, MEERUT (UP)
2. Adv. / Consult MS. SHIRIN KHAJURIA, ADV.,
   S-336, FF GREATER KAILASH,
   PART-II, N. DELHI-1
3. C.D.R
~~4 J.C.D.R.~~
5. Bar association, CESTAT, New Delhi
6. Director Publications, Customs, Excise. I.P. Estate, New Delhi
7. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8. Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9. Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10. M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11. M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
12. Taxindiaonline.com Pvt.Ltd. B-XI/8183,Vasant Kunj, New Delhi - 110070
13. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
14. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
15. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
16. Office Copy
17. Guard file

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R. K. Puram, New Delhi
COURT-III

Date of hearing/decision: 8.12.2009

Excise Appeal No. 894 of 2006-Ex.

[Arising out of order-in-Appeal No. 303-CE/MRT-II/2005 dated 16.12.2005 passed by the Commissioner (Appeals), Customs & Central Excise, Meerut]

For approval and signature:

Hon'ble Shri M. Veeraiyan, Technical Member
Hon'ble Shri D.N. Panda, Judicial Member

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982.	Yes
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3	Whether Their Lordships wish to see the fair copy of the Order?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

Hindustan Coca Cola Beverages Pvt. Ltd. — Appellant

Vs.

CCE, Meerut-II — Respondent

Appearance:

Appeared for the Appellant – Ms. Shirin Khajuria, Advocate

Appeared for the Respondent- Shri Mahesh Rastogi, SDR

Coram: Hon'ble Shri M. Veeraiyan, Technical Member
Hon'ble Shri D.N. Panda, Judicial Member

FINAL Order No. 1354 / 09 - EX

Per: M. Veeraiyan:

This is an Appeal against the order of the Commissioner (Appeals) No. 303-CE/MRT-II/2005 dated 16.12.2005 by which the order of the original Authority dated 6.10.2004 dropping the proceedings on the show-cause notice dated 22.12.2003 was set aside.

2. Heard both sides.

3. The Appellant is a manufacturer of aerated waters and they have availed Cenvat credit of duty paid on glass bottles. A show-cause notice was issued alleging that the waste and scrap of broken glass bottles generated in the factory of the party is an excisable commodity as a separately identifiable goods and classifiable under sub-heading No. 7001.10 and attracts duty, accordingly proposing demand of Rs.2,02,059/- relating to the period 1.12.2002 of 30.9.2003. The original Authority held that waste and scrap arising out of bottles broken cannot be considered as having been manufactured or the final product viz. scrap be treated as excisable goods and accordingly dropped proceedings on the show-cause notice. On appeal by the Department, Commissioner (Appeals) held that the scrap is a final product within the ambit of Cenvat Credit Rules and, therefore, there is no exemption on removal of waste and scrap during the period under demand.

4. Ld. Advocate for the Appellant submits that breakage of glass bottles occurred due to handling of the bottles during the process of cleaning, sanitation, filling. of aerated waters in the bottles and in subsequent handling of the bottles. The breaking of the bottles accidentally in these processes can by no stretch of imagination be treated as process of manufacture and that no excisable goods emerge during such processes. She, therefore, seeks setting aside

the order of Commissioner (Appeals) and restoration of the order of the original Authority.

5. Ld. SDR reiterates the findings of the Commissioner (Appeals)

6. We have carefully considered the submissions. We have perused the show-cause notice. The show-cause notice proposes to treat the broken bottles as an excisable product emerging out of a process of manufacture. We are not able to agree with the proposal in the show-cause notice. Therefore, we do not find any error in the order of the original Authority. Under these circumstances, the order of the Commissioner (Appeals) setting aside the order of the original authority cannot be sustained.

7. In view of the above, we set aside the order of the Commissioner (Appeals) and restore the order of the original Authority.

8. The Appeal is disposed of in the above terms.

(Dictated & pronounced in open Court)

(M. VEERAIYAN)
TECHNICAL MEMBER

(D.N. PANDA)
JUDICIAL MEMBER

RM